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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 84

JESSE TURNER,

Appellant,

vs.

CITY OF MEMPHIS, a Municipal Corporation Chartered under the Laws of the State of Tennessee, and DOBBS HOUSES, INC., a Corporation Organized and Existing under the Laws of the State of Tennessee, and W. S. HAVERFIELD, Manager of the Dobbs Houses, Inc., Restaurant in Memphis Municipal Airport,

Appellees.

BRIEF ON BEHALF OF DOBBS HOUSES, INC. AND W. S. HAVERFIELD, APPELLEES

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BRIEF ON BEHALF OF DOBBS HOUSES, INC. AND W. S. HAVERFIELD, APPELLEES

PREFACE

The positions of Dobbs Houses, Inc. and its manager, W. S. Haverfield, have been stated in the Motion to Dismiss Appeal filed on their behalf in this Court in this case and will not be duplicated in this brief.

APPELLEES' POSITION

The doctrine of abstention was correctly applied below and should be sustained.

ARGUMENT

Everything else aside, Dobbs Houses, Inc. is faced with the proposition that it operates the restaurant at Memphis Municipal Airport under a lease with the City of Memphis which requires that no part of the leased premises shall be used for any purpose in violation of the laws of Tennessee. (Record, pp. 8 to 17, at p. 14.)

Admittedly, (appellant's brief, pp. 2-3), it is a violation of the criminal statutes of Tennessee for a restaurant operator to fail to comply with rules and regulations made by the Division of Hotel and Restaurant Inspection, Department of Conservation of the State of Tennessee (Tennessee Code Annotated, Sections 53-2120 and 53-2121), and that there is in existence in Tennessee a regulation made by that agency under statutory authority, No. R-18(L), which provides:

> "Restaurants catering to both white and negro patrons should be arranged so that each race is properly segregated. Segregation will be considered proper where each race shall have separate entrances and separate facilities of every kind necessary to prevent patrons of the different races coming in contact with the other in entering, being served, or at any other time until they leave the premises."

This regulation has not been before the Tennessee Courts for construction, nor has its constitutionality been there challenged.

Appellant argues that the regulation is ambiguous and does not require segregation of the races in restaurants. (Appellant's brief, p. 15.)

However, the City of Memphis has construed the regulation as mandatory and as requiring segregation of races in the restaurant operated by Dobbs Houses, Inc. at Memphis Municipal Airport. (Answer of City of Memphis, Third Defense, R. p. 7.)

The regulation may, as contended by appellant, be unconstitutional, but, under the law of Tennessee, it is deemed valid and enforceable until declared invalid by a Court of competent jurisdiction.

Claybrook v. State, (1932) 164 Tenn. 440, 443.

Dobbs Houses, Inc., if it should accept appellant's contention and desegregate its restaurant, would subject itself (1) to arrest and prosecution under state law each time it served a negro citizen, and (2) to a forfeiture or attempted forfeiture of its lease with the City of Memphis. Such action would involve a multiplicity of actions and an unnecessary harassment of this appellee.

Under these facts and circumstances *Harrison v. N.A.A.C.P.* (1959), 360 U. S. 167, is applicable and the doctrine of abstention as applied by the Court below (R. pp. 87-89) is appropriate to the protection and preservation of the rights of all the parties.

CONCLUSION

It is, therefore, prayed that this appeal be dismissed, or deferred until such time as the Courts of Tennessee have been afforded an opportunity to construe, interpret and pass on the validity of the state laws and regulations hereinbefore set forth.

Respectfully submitted,

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